



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.: 09/853,428 : FILING DATE: May 10, 2001

ART UNIT: 3739 : EXAMINER: Gibson, Roy Dean

FIRST NAMED INVENTOR: Brainard

TITLE: Photoreceptor System for Melatonin Regulation and Phototherapy

**Commissioner for Patents
Alexandria, VA 22313**

RESPONSE TO OFFICE ACTION MAILED ON AUGUST 1, 2008 AND CLAIM

AMENDMENTS

I. CLAIM OBJECTIONS

Applicants do not either agree or disagree with Examiner's position that claims 30, and 47 - 56 are substantially similar to claims 29 and 31, 32, 2, 34 - 36 and 43 -46 respectively, however Applicants withdraw claims 30 and 47 - 56 herein for reasons of efficiency and not for reasons of patentability; which Applicants may resubmit in a continuation application to be filed while the current application is pending.

Applicants do not either agree or disagree with Examiner's position that claim 33 is an improper dependent claim of claim 31, however Applicants withdraw claim 33 for reasons of efficiency and not for reasons of patentability; which Applicants may resubmit in a continuation application to be filed while the current application is pending.

In response to Examiner's request, Applicants have amended claims 34 and 40 to change the word "emit" to the word "transmit".

II. CLAIM REJECTIONS – 35 USC § 102

In response to Examiner's rejection of claims 2, 14, and 31 - 56, which were rejected under 35 U.S.C. § 102(b), Applicants amend claim 31 to include the following: "causing said optical radiation to be therapeutically effective by employing a pre-established spectral composition comprising at least one enhanced spectral region comprising at least one peak of emitted light within the range of 435-488 nm". Applicant's note that Searfoss et al. (5,265,598), among other differences, fails to teach causing optical radiation to be therapeutically effective by employing a pre-established spectral composition comprising at least one enhanced spectral region comprising at least one peak of emitted light within the range of 435-488 nm. Applicants further note that claims 32, 34 and 40 are amended to be placed in proper dependent form, and that claims 2, 12, 14, 32 and 34 - 46 now depend from allowable claims.

Applicants further traverse Examiner's reliance on common knowledge in the art pursuant to MPEP § 2144.03. Applicant traverses the Examiner's reliance on common knowledge because the Examiner's statement that "(blue light filter on wheel of eight narrow band pass filters each with 10-20 nm width and a "peak" in the blue range (450-510 which overlaps the claimed range of 435-488 while the blue filter transmits the therapeutically effective light in the effective amount)" is not capable of instant and unquestionable demonstration as being well-known. It is noted that Searfoss et al. (5,265,598) does not teach a blue light filter or the 435 – 488 nm waveband. The only color Searfoss et al. (5,265,598) specifically identifies is "green" which is mentioned three times in the claims, once in the Summary and once in the Description. Searfoss et al. (5,265,598) identifies no other colors in their application.

In addition, Applicants traverse the Examiner's reliance on common knowledge because the Examiner's statement that "a typical blue or any color filter is a inherently made of a transparent substrate with various coating which are selected to provide a transmission of selected wavelengths of, in this case, 10-20 nm wide and peaking in the blue. Note that the light filtering component would be transparent or translucent depending upon the thickness of the coating material(s)" is not capable of instant and unquestionable demonstration as being well-known. It is noted that Searfoss et al. (5,265,598) does not teach a blue light filter.

III. CLAIM REJECTIONS - 35 USC § 103

Applicants traverse Examiner's rejection of claims 28 - 30 which were rejected under 35 U.S.C. § 103, and Applicant withdraws claims 28 - 30 for reasons of efficiency and not for reasons of patentability; which Applicants intend to resubmit in a continuation application to be filed while the current application is pending.

IV. AMENDMENTS

Amend the claims as follows: